



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,601	03/29/2004	Siegfried Fischer	37105.0052	2710

26712 7590 12/14/2006

HODGSON RUSS LLP  
ONE M & T PLAZA  
SUITE 2000  
BUFFALO, NY 14203-2391

EXAMINER

LANDRUM, EDWARD F

ART UNIT PAPER NUMBER

3724

DATE MAILED: 12/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/811,601

Applicant(s)

FISCHER, SIEGFRIED

Examiner

Edward F. Landrum

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3 and 7-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

1. In view of the Appeal brief filed on 10/23/2006, PROSECUTION IS HEREBY REOPENED. New grounds of rejections are set forth below.

To avoid abandonment of the application, appellant must exercise one of the following two options:

- (1) File a reply under 37 CFR 1.111 (if this Office action is non-final) or a reply under 37 CFR 1.113 (if this Office action is final); or,
- (2) Request reinstatement of the appeal.

If reinstatement of the appeal is requested, such request must be accompanied by a supplemental appeal brief, but no new amendments, affidavits (37 CFR 1.130, 1.131 or 1.132) or other evidence are permitted. See 37 CFR 1.193(b)(2).

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 7, and 9 rejected under 35 U.S.C. 102(b) as being anticipated by Borter (U.S Patent No. 6,035,460).

Borter teaches (see Figure 1) a knife holder (the shower stall), a pressure plate (16, the shower door) and a wedge-shaped, parallel sided, U-shaped frame (the frame surrounding the shower door) which is detachably mounted to the pressure plate by magnets (24) wherein the frame and the pressure plate cooperate to form a watertight

Art Unit: 3724

seal (Col. 6, lines 12-17). A shower door is capable of holding a razor that is snug as by a suction cup (McCoy (U.S Patent No. 5,839,198); see Figures 4 and 5; Col. 2, lines 35-43). The razor can be considered as a microtome in that skin and hair samples can be taken and used for DNA analysis to meet the definition of a microtome.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Metzner et al (U.S Patent No. 5,964,138), hereinafter Metzner, in view of Goodman (U.S Patent No. 5,551,326), in further view of Rains (U.S Patent No. 3,556,341), Anastos (U.S Patent No. 4,660,715), Kassovic (U.S Patent No. 2,506,600), Piroch (U.S Patent No. 6,520,367), Berger (U.S Patent No. 4,100,684), or Schweizer (U.S Patent No. 3,455,359).

Metzner teaches (see Figure 1) a knife holder (1) for a cutting knife (2) having a knife edge (16). The knife holder (1) comprises a pressure plate (6) for locking the cutting knife (2) in the knife holder (1) and for inherently discharging the cut sample. The pressure plate (6) is made of metal.

Metzner teaches all of the elements of the current invention as stated above except a one-piece U-shaped frame, with two parallel wedge shaped limbs, mounted

detachably on the pressure plate where a fluid seal is formed between the pressure plate and the U-shaped frame so as to form a water pan.

Goodman teaches see (Figure 4) detachably attaching a U-shaped frame with parallel wedge shaped limbs to a surface designed receive a cut sample. Together the receiving surface and the U-shaped frame form a water pan as there is a fluid seal between U-shaped frame and the receiving surface.

It would have been obvious to have modified Metzner to incorporate the teachings of Goodman to provide a detachably mounted U-shaped water pan for the pressure plate that is detachably mounted to the pressure plate since the pressure plate is designed to receive the cut sample. This would allow multiple series of sections of a specimen to be cut in a row to form a chain that may be removed as one piece so as to provide a set of specimen sections of known relationship to each other.

Rains, Anastos, Kassovic, Piroch, Berger, and Schweizer teach that it is old and well known to detachably mount an object to a metal surface via a magnet.

It would have been obvious to have modified the modified device of Metzner to incorporate Rains, Anastos, Kassovic, Piroch, Berger, or Schweizer to detachably mount the U-shaped frame via magnets. The Examiner takes official notice the fact that the use of magnets is known in the connection art to be equivalent to clips for use in attaching an object to a metal object. To substitute magnets in the modified device of Metzner for the disclosed clip of Goodman would have been an obvious functional equivalent.

5. Claim 8 is rejected under 35 U.S.C. 103(a) as being unpatentable over the modified device of Metzner in view of Heid (U.S. Publication No. 2001/0003938).

The modified device of Metzner teaches all of the elements of the current invention as stated above except the use of a pivotably mounted blade guard.

Heid teaches (Paragraph 31; also see Figure 1) the use of a pivotably mounted blade guard (10 and 11) attached to a knife holder.

It would have been obvious to have modified the modified device of Metzner to incorporate the teachings of Heid to create a safer cutting apparatus by incorporating a pivotable blade guard into the U-shaped frame.

#### ***Response to Arguments***

6. Applicant's arguments with respect to claims 1, 3, and 7- 9 have been considered but are moot in view of the new ground(s) of rejection.

Regarding applicant's arguments based on the Borter rejection, the entire shower stall can be considered the knife holder and therefore when the door is closed and held shut via magnets, the door, which is considered the pressure plate, effectively locks the cutting knife in the knife holder. Since the door can move relative to the U-shaped frame the U-shaped frame is detachably mounted to the pressure plate. Furthermore, since there is a watertight seal between the U-shaped frame and the door, the two when attached cooperate to form a water pan since water could not be held within the shower without the U-shaped frame and the door forming a watertight seal. Regarding claim 3, the frame operates as a one-piece component and therefore can be considered a one-piece component. Regarding claim 9, Figure 9 shows the portions of the U-shaped

Art Unit: 3724

frame tapering in width, therefore the parallel limbs of the U-shaped frame can be considered wedge shaped.

### ***Conclusion***

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kindel et al (U.S Patent No. 4,221,146), Martinelli (U.S Patent No. 3,225,639), Metzner (U.S Patent No. 5,669,278), and Neymeyr (U.S Patent No. 6,058,824) teach pressure plates and boats for microtomes. Johnson et al (U.S Patent No. 4,542,545) teaches making a watertight seal by use of magnets. Wade (U.S Patent No. 6,263,582) teaches a razor sealable to a surface by use of suction cups.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Edward F. Landrum whose telephone number is 571-272-5567. The examiner can normally be reached on Monday-Friday 8-4:30.

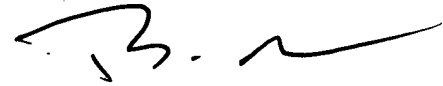
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Boyer Ashley can be reached on 571-272-4502. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3724

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EFL

11/29/2006



BOYER D. ASHLEY  
SUPERVISORY PATENT EXAMINER